

EXHIBIT 131

Providence, RI

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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In Re: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE LITIGATION)

-----X MDL No. 1456

THIS DOCUMENT RELATES TO:) Master File No.
United States of America ex rel.) 01-CV-12257-PBS
Ven-A-Care of the Florida Keys,)
Inc., et al. v. Dey, Inc., et al.,)
Civil Action No. 05-11084-PBS,) Hon. Patti B.
and United States of America ex) Saris
rel. Ven-A-Care of the Florida)
Keys, Inc., et al. v. Boehringer)
Ingelheim Corp., et al., Civil)
Action No. 07-10248-PBS)

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VIDEOTAPED DEPOSITION OF
THE RHODE ISLAND DEPARTMENT OF HUMAN SERVICES

by PAULA AVARISTA
Providence, Rhode Island
Thursday, December 4, 2008

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<p style="text-align: right;">Page 130</p> <p>1 Q. So is it your understanding that the</p> <p>2 goal of Rhode Island Medicaid was to identify an</p> <p>3 ingredient cost that had some provision for</p> <p>4 markup from the price at which the pharmacies</p> <p>5 actually purchased the drug?</p> <p>6 MS. BAUM: Objection.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MS. RANKIN:</p> <p>9 Q. And has that always been your</p> <p>10 understanding Rhode Island Medicaid program's</p> <p>11 efforts with respect to identifying ingredient</p> <p>12 cost component for Medicaid reimbursement, that</p> <p>13 they would want to provide some margin over the</p> <p>14 actual purchase price for pharmacy providers?</p> <p>15 A. Yes.</p> <p>16 Q. And just to be clear, we are talking</p> <p>17 just about the ingredient cost component of the</p> <p>18 reimbursement, right, not the dispensing fee</p> <p>19 component?</p> <p>20 A. Yes.</p> <p>21 Q. The dispensing fee would be an</p> <p>22 additional reimbursement component in addition to</p>	<p style="text-align: right;">Page 132</p> <p>1 under the Medicaid prescription drug program."</p> <p>2 And then if you scroll down to the third</p> <p>3 paragraph, second sentence, it says, "We</p> <p>4 estimated that nationally actual drug acquisition</p> <p>5 cost was an average of 65.93 percent below AWP."</p> <p>6 Do you recall receiving this report?</p> <p>7 A. I don't remember.</p> <p>8 Q. But you generally did receive OIG</p> <p>9 reports relating to Medicaid reimbursement; is</p> <p>10 that right?</p> <p>11 A. Yes.</p> <p>12 Q. And if you received them, it would be</p> <p>13 your practice to review them?</p> <p>14 A. Read them, yes.</p> <p>15 Q. Let's turn to page 7 of this report.</p> <p>16 Under other matters, it states, "For the eight</p> <p>17 states that we reviewed in addition to our</p> <p>18 comparison of AWP to acquisition costs, we also</p> <p>19 compared WAC to invoice price. This was done</p> <p>20 because some states use WAC plus a percentage in</p> <p>21 determining their pharmacy reimbursement</p> <p>22 methodology. We estimated that the invoice price</p>
<p style="text-align: right;">Page 131</p> <p>1 the ingredient cost component which has some</p> <p>2 markup over actual acquisition cost?</p> <p>3 A. Yes.</p> <p>4 Q. Was your position for Rhode Island</p> <p>5 Medicaid in 2002 still the chief of pharmacy</p> <p>6 under the Medicaid program?</p> <p>7 A. Yes.</p> <p>8 Q. And I believe you previously testified</p> <p>9 that you, as part of your role as chief of</p> <p>10 pharmacy, would review OIG reports relating to</p> <p>11 Medicaid reimbursement?</p> <p>12 A. I would read them.</p> <p>13 Q. I'd like to refer back to previously</p> <p>14 marked Exhibit Roxane 12, please. I think I gave</p> <p>15 you two exhibits, I'm sorry. Just that one.</p> <p>16 I've handed you a report from the OIG</p> <p>17 dated March 14, 2002. Subject: Medicaid</p> <p>18 pharmacy actual acquisition cost of generic</p> <p>19 prescription drug products. In the first</p> <p>20 paragraph, second sentence states, "This report</p> <p>21 provides the results of our review of pharmacy</p> <p>22 acquisition costs for generic drugs reimbursed</p>	<p style="text-align: right;">Page 133</p> <p>1 for generic drugs was a national average of 30.55</p> <p>2 percent below WAC rather than it being higher,</p> <p>3 and therefore perhaps supporting that a</p> <p>4 percentage be added to WAC." Then it states two</p> <p>5 sentences later: "The results of our review show</p> <p>6 that WAC was not a true wholesale acquisition</p> <p>7 price and was significantly higher than the</p> <p>8 actual acquisition costs for generic drugs.</p> <p>9 Therefore, we believe the use of WAC plus a</p> <p>10 percentage as the basis for reimbursing</p> <p>11 pharmacies could result in payments which</p> <p>12 significantly exceed the actual acquisition costs</p> <p>13 of generic drugs."</p> <p>14 Do you recall discussing the extent to</p> <p>15 which WAC could differ from actual acquisition</p> <p>16 cost with anyone at Rhode Island Medicaid from</p> <p>17 2000 on?</p> <p>18 A. Not that I recall, no.</p> <p>19 Q. Have you ever understood Wholesale</p> <p>20 Acquisition Costs to be the same thing as actual</p> <p>21 acquisition cost for pharmacies?</p> <p>22 A. At the time -- when we first introduced</p>

34 (Pages 130 to 133)

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